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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,525	06/29/2001	Nicola Sabatini	SABATINI-2	4692

1444 7590 05/19/2003

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EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/869,525

Applicant(s)

SABATINI, NICOLA

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, "comprising as" should be changed to the more acceptable transitional phrase - - comprising- -.

In line 3, same claim, "characterized in that" should be changed to a more conventional transitional phrase. See also the subsequent claims that recite this language. In line 3, "phases" should be changed to - - steps- - because the limitations that follow are steps in the method. The same applies to the other occurrences of "phase".

In claim 7, line 2, "also" should be changed to - - further comprising - - . See also claim 8, line 2.

In claims 11 and 12, lines 4-5 and line 5, respectively, "the solubilization phase a)" lacks antecedent basis, see claim 1.

In claims 17 and 18, line 3, the language "three flows whereof respectively" is incomprehensible and should be corrected.

In claim 19, "comprising as fertilizing" should be corrected to a clearer language.

In claim 25, line 2, "also" should be changed to - - further comprising- -.

Claim 31 provides for the use of the fertilizer, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 31 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

In claim 31, "the localized fertilization-irrigation" lacks antecedent basis.

In line 3, same claim, "by means of a distribution on the soil" is incomprehensible and grammatically incorrect.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8, 10, 12, 14, 16, 19-22, 26, 28 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US Patents 3049416 or 3049418) or DE 12233418.

The process is described at col. 2 and at col. 4 in Brown et al. Also see examples. At col. 4, lines 30-40 disclose the product as a mixture of monoammonium

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phosphate, potassium nitrate and ammonium nitrate. Example 1 describes granulating and drying. Concentrating is an inherent step in granulation using a filtrate. Amounts are shown. Since the salts are the same, the solubility must be the same.

The process described in DE 1233418 shows separating the precipitate, granulation and drying. The final product contains the same 3 salts. Concentrating is an inherent step in granulation using a filtrate. Since the salts are the same, the solubility must be the same.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-7, 9, 11, 13, 15, 17-18, 23-25, 27, 29, 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (either of the patents) in view of Goldberg et al. (US Patent 1788828) and FR 25196626 and further in view of Seymour (US Patent 3323863).

The patents to Brown et al. are as discussed above. They do not show the addition of the nutrients such as those of claim 7, nor do they teach water contents or granular sizes. Both the patents '828 and FR '626 teach a similar process of dissolving mixed salts to obtain a solution of mixed fertilizers, removing the precipitate and

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concentrating the filtrate. The examples in '828 show a NPK fertilizer that also contains calcium, added using a similar method. In FR '626, which also provides for a NPK fertilizer, teaches incorporating sulfates to obtain a final mixture of ammonium phosphate, potassium nitrate and ammonium sulfate. Furthermore, Seymour teaches obtaining high purity sulfates and uses a procedure that is typically the same, which is, using a liquid phase or filtrate rich in phosphates, filtering, centrifuging or decanting, separating solids from the liquid and then following this up with drying and sizing operations. See cols. 1 and 2, especially lines 65+ at col. 2. It would have been obvious to one of ordinary skill in the art to follow up the steps of drying and granulating with sizing operations and size the granules to the desired size. It would have also been obvious to dry the solids obtained by granulation to the water content desired, even though the primary patents to Brown et al. do not discuss water contents of the very same salts that give a NPK mix of fertilizers.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

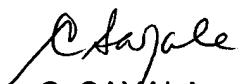
The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.



C. SAYALA
Primary Examiner
Group 1700.